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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No.....

STATE OF UTAH and VERNON P. BRIDGE,
Petitioners,

—vs.—

UNITED STATES OF AMERICA and the UNITED STATES CIVIL SERVICE COMMISSION,
Respondents.

No.....

STATE OF UTAH and HORACE J. GUNN,
Petitioners,

—vs.—

UNITED STATES OF AMERICA and the UNITED STATES CIVIL SERVICE COMMISSION,
Respondents.

No.....

STATE OF UTAH and PANOS J. GEORGOPOULOS.
Petitioners,

—vs.—

UNITED STATES OF AMERICA and the UNITED STATES CIVIL SERVICE COMMISSION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above entitled cases on 3 January 1961.

CITATIONS TO OPINIONS BELOW

The report and order of the Civil Service Commission are unreported and are printed in Appendix B hereto, infra, p. 49. The Order and Findings of Fact and Conclusions of Law of the District Court are unreported and are printed in Appendix B hereto, infra, p. 29. The opinion of the Circuit Court of Appeals, printed in Appendix B hereto, infra, p. 20, is reported in .....F.2d .....

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on 3 January 1961. Rehearing was not applied for and the time for such remedy has expired. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1) and 5 U.S.C. Sec. 118K(c).

QUESTION PRESENTED

Whether the action of the United States Civil Service Commission in ordering the dismissal of appellants for alleged violations of Sec. 12 (a) of the Hatch Political Activities Act for coercive efforts to obtain political contributions from employees of the Utah State Road Commission was arbitrary, capricious, unjustified in law and unsupported in fact, and hence an abuse of discretion.

STATUTE INVOLVED

The statutory provision involved is Section 12(a) of the Hatch Political Activities Act. 54 Stat. 767, 5 U.S.C., Sec. 118K(a). This section and other relevant provisions are printed in Appendix A, infra, p. 12.

STATEMENT

The United States Civil Service Commission brought action against the petitioners, Vernon P. Bridge, Horace J. Gunn, and Panos J. Georgopoulos and others, under Section 18(K) of the Hatch Act (5 U.S.C. 118i et seq.) in August 1958, alleging violation of the Act for "directly or indirectly coercing or advising other officers or employees" to make contributions to the Republican party while employees of the Utah Road Commission. (R. 2)

A hearing was had before the Civil Service Commission on July 28, 1959, which consisted of stipulated evidence and oral argument. On 10 September 1959 a report and order of the Civil Service Commission was entered dismissing the charges against persons not here involved, and finding that petitioners had violated the above cited act by participation in a plan for collection of political contributions, coercive in character, and finding further that the violations warranted removal from employment by the State of Utah, with ineligibility for re-employment for 18 months. The findings of coercion were based upon the circulation of a letter and soliciting contributions to the Republican party for a Republican campaign dinner. (R. 6, 192, 210.) Contributions were solicited and obtained from employees of the Road Commission. The only issue of dispute before the Civil Service Commission was whether such actions were coercive and required removal of the petitioners.

The Civil Service Commission found the actions of petitioners to be coercive; however, the Utah State Road Commission determined the findings to be incorrect, and hence refused to discharge petitioners.

On 9 October 1959 the case was brought for review before the United States District Court for Utah. The cases were consolidated for hearing because they arose from the same transaction and incident. During the pendency of the review by the District Court the action of the Civil Service Commission was stayed. On the 14th of March, 1960, the District Court affirmed the decision of the Civil Service Commission. (R. 126). On 11 May 1960, the petitioners filed a notice of appeal for review by the Tenth Circuit Court of Appeals (R. 126). The case was heard by the Circuit Court, and on 3 January 1961, the opinion of the Court was rendered affirming the decision of the United States District Court for Utah. The Tenth Circuit Court of Appeals in the course of their opinion rejected a contention of the Civil Service Commission that the issue became moot because of the finality of the discharge order of the Civil Service Commission. The Court said:

> "We hold that the issues did not become moot when and if the discharging orders became effective for failure to stay and suspend."

Having determined the issue to be still alive, the Circuit Court determined that the Civil Service Commission had not acted arbitrarily and capriciously.

Upon the failure of the Utah State Road Commission to remove the employees in question, the Civil Service Commission, on 3 February 1960, ordered the withholding of $42,000 of federal funds from the State of Utah.

REASONS FOR GRANTING THE WRIT

1. The decisions of the United States Supreme Court under the statute in question have concerned themselves

primarily with the constitutionality of the Hatch Act itself as it relates to regulation of state employees. 54 Stat. 767, et seq., 5 U.S.C. 118i, etc. *Oklahoma v. United States,* 330 U.S. 127, 91 L. Ed. 794, 67 S. Ct. 544. However, in *Oklahoma v. United States,* op. cit. p. 145, U.S. Reports, the Court said:

> "The review by the court shall be on the record entire, including all of the evidence taken on the hearing, and shall extend to questions of fact and questions of law."

There is no question that the courts may review the decisions of the Civil Service Commission, and when arbitrary set them aside. 5 U.S.C. 118K(c).

There is, however, a basic conflict between the administration of the Act by the Civil Service Commission and the clear intention of Congress as to purposes of the Act. The Act itself does not establish standards by which the Civil Service Commission is to determine whether a violation of the Act "warrants the removal of the officer or employee." As a consequence of the failure of Congress to establish appropriate standards, and the fact that the Supreme Court has not passed upon the extent of the discretion that may be exercised by the Commission, a vacuum has been created that has allowed the Civil Service Commission to operate with wide authority in an area which is within the shadow lands of constitutionality. See Mr. Justice Black's Opinion. *United Public Workers of America v. Mitchell,* 330 U.S. 75. In doing so, the application of the Act clearly contravenes the Congressional and Executive intention that spawned the Act. President Roosevelt in recommending the extension of the original Hatch Act,